

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 844

Introduced by Assembly Member Dickinson

February 21, 2013

An act to amend ~~Section 2944.7 of~~ Sections 1747.02, 1747.08, 1747.09, and 1748.30 of, and to add Section 1747.08.1 to, the Civil Code, and to amend Section 99030 of the Education Code, relating to ~~mortgages~~ credit and debit cards.

LEGISLATIVE COUNSEL'S DIGEST

AB 844, as amended, Dickinson. ~~Mortgage loan modification. Credit and debit cards: transactions: personal information.~~

Existing state and federal law regulate the provision of credit and the use of credit cards. Existing state law prohibits a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business from requesting or requiring the cardholder to provide personal identification information, which is then recorded, as a condition to accepting the credit card as payment in full or in part for goods or services, but provides various exceptions to this prohibition.

Under existing law, a person who violates the above provisions is subject to specified civil penalties, an action for injunctive relief, or both.

This bill would extend the above restrictions regarding the collection of personal identification information to debit cards. The bill would define "debit card" and related terms for these purposes, and would make conforming changes.

This bill would prohibit the operator of a commercial Internet Web site or online service that collects personal identifiable information

from requiring a credit cardholder or debit cardholder to provide any information other than a ZIP Code to complete the Internet credit card or debit card transaction, except under specified circumstances. The bill would authorize the assessment of civil penalties or an action for injunctive relief, or both, for a violation of these provisions.

Existing law prohibits a person, firm, partnership, association, corporation, or limited liability company that accepts credit or debit cards for the transaction of business from printing more than the last 5 digits of an individual's credit card or debit card number, or the expiration date, on a transaction receipt, as specified.

This bill would revise the above provisions to remove specific references to printed receipts, and would make other conforming changes.

~~Existing law, applicable to residential mortgages, prohibits a person who negotiates, arranges, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation from, among other things, demanding or receiving any compensation until every service that the person contracted to perform or represented that he or she would perform is accomplished.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1747.02 of the Civil Code is amended to
2 read:

3 1747.02. As used in this title:

4 (a) "Credit card" means any card, plate, coupon book, or other
5 single credit device existing for the purpose of being used from
6 time to time ~~upon presentation~~ to obtain money, property, labor,
7 or services on credit. "Credit card" does not mean any of the
8 following:

9 (1) Any single credit device used to obtain telephone property,
10 labor, or services in any transaction under public utility tariffs.

11 (2) Any device that may be used to obtain credit pursuant to an
12 electronic fund transfer, but only if the credit is obtained under an
13 agreement between a consumer and a financial institution to extend
14 credit when the consumer's asset account is overdrawn or to

1 maintain a specified minimum balance in the consumer's asset
2 account.

3 (3) Any key or card key used at an automated dispensing outlet
4 to obtain or purchase petroleum products, as defined in subdivision
5 (c) of Section 13401 of the Business and Professions Code, that
6 will be used primarily for business rather than personal or family
7 purposes.

8 (b) "Accepted credit card" means any credit card that the
9 cardholder has requested or applied for and received or has signed,
10 or has used, or has authorized another person to use, for the purpose
11 of obtaining money, property, labor, or services on credit. Any
12 credit card issued in renewal of, or in substitution for, an accepted
13 credit card becomes an accepted credit card when received by the
14 cardholder, whether the credit card is issued by the same or a
15 successor card issuer.

16 (c) *"Debit card" means an accepted debit card or other means*
17 *of access to a debit cardholder's account that may be used to*
18 *initiate electronic funds transfers and may be used without unique*
19 *identifying information such as a personal identification number*
20 *to initiate access to the debit cardholder's account.*

21 (d) *"Accepted debit card" means a debit card that the debit*
22 *cardholder has requested and received or has signed, or has used,*
23 *or has authorized another person to use, for the purpose of*
24 *obtaining money, property, labor, or services. Any debit card*
25 *issued in renewal of, or in substitution for, an accepted debit card*
26 *becomes an accepted debit card when received by the debit*
27 *cardholder, whether the debit card is issued by the same or by a*
28 *successor card issuer.*

29 ~~(e)~~

30 (e) "Card issuer" means any person who issues a credit card or
31 the agent of that person for that purpose with respect to the credit
32 card.

33 ~~(f)~~

34 (f) "Cardholder" means a natural person to whom a credit card
35 is issued for consumer credit purposes, or a natural person who
36 has agreed with the card issuer to pay consumer credit obligations
37 arising from the issuance of a credit card to another natural person.
38 For purposes of Sections 1747.05, 1747.10, and 1747.20, the term
39 includes any person to whom a credit card is issued for any
40 purpose, including business, commercial, or agricultural use, or a

1 person who has agreed with the card issuer to pay obligations
2 arising from the issuance of that credit card to another person.

3 (g) “Debit card issuer” means any person who issues a debit
4 card or the agent of that person for that purpose.

5 (h) “Debit cardholder” means a natural person to whom a debit
6 card is issued.

7 ~~(e)~~

8 (i) “Retailer” means every person other than a card issuer or
9 debit card issuer who furnishes money, goods, services, or anything
10 else of value upon presentation of a credit card or debit card by a
11 cardholder or debit cardholder. “Retailer” shall not mean the state,
12 a county, city, city and county, or any other public agency.

13 ~~(f)~~

14 (j) “Unauthorized use” means the use of a credit card or debit
15 card by a person, other than the cardholder or debit cardholder,
16 (1) who does not have actual, implied, or apparent authority for
17 that use and (2) from which the cardholder or debit card holder
18 receives no benefit. “Unauthorized use” does not include the use
19 of a credit card or debit card by a person who has been given
20 authority by the cardholder or debit cardholder to use the credit
21 card or debit card. Any attempted termination by the cardholder
22 or debit cardholder of the person’s authority is ineffective as
23 against the card issuer or debit card issuer until the cardholder or
24 debit cardholder complies with the procedures required by the
25 card issuer or debit card issuer to terminate that authority.
26 Notwithstanding the above, following the card issuer’s or debit
27 card issuer’s receipt of oral or written notice from a cardholder
28 or debit cardholder indicating that it wishes to terminate the
29 authority of a previously authorized user of a credit card or debit
30 card, the card issuer or debit card issuer shall follow its usual
31 procedures for precluding any further use of a credit card or debit
32 card by an unauthorized person.

33 ~~(g)~~

34 (k) An “inquiry” is a writing that is posted by mail to the address
35 of the card issuer or debit card issuer to which payments are
36 normally tendered, unless another address is specifically indicated
37 on the statement for that purpose, then to that other address, and
38 that is received by the card issuer or debit card issuer no later than
39 60 days after the card issuer transmitted the first periodic statement

1 that reflects the alleged billing error, and that does all of the
2 following:

3 (1) Sets forth sufficient information to enable the card issuer *or*
4 *debit card issuer* to identify the cardholder *or debit cardholder*
5 and the account.

6 (2) Sufficiently identifies the billing error.

7 (3) Sets forth information providing the basis for the
8 cardholder's *or debit cardholder's* belief that the billing error
9 exists.

10 ~~(h)~~

11 (l) A "response" is a writing that is responsive to an inquiry and
12 mailed to the cardholder's *or debit cardholder's* address last known
13 to the card issuer *or debit card issuer*.

14 ~~(i)~~

15 (m) A "timely response" is a response that is mailed within two
16 complete billing cycles, but in no event later than 90 days, after
17 the card issuer *or debit card issuer* receives an inquiry.

18 ~~(j)~~

19 (n) A "billing error" means an error by omission or commission
20 in (1) posting any debit or credit, or (2) in computation or similar
21 error of an accounting nature contained in a statement given to the
22 cardholder *or debit cardholder* by the card issuer *or debit card*
23 *issuer*. A "billing error" does not mean any dispute with respect
24 to value, quality, or quantity of goods, services, or other benefit
25 obtained through use of a credit card *or debit card*.

26 ~~(k)~~

27 (o) "Adequate notice" means a printed notice to a cardholder
28 *or debit cardholder* that sets forth the pertinent facts clearly and
29 conspicuously so that a person against whom it is to operate could
30 reasonably be expected to have noticed it and understood its
31 meaning.

32 ~~(t)~~

33 (p) "Secured credit card" means any credit card issued under
34 an agreement or other instrument that pledges, hypothecates, or
35 places a lien on real property or money or other personal property
36 to secure the cardholder's obligations to the card issuer.

37 ~~(m)~~

38 (q) "Student credit card" means any credit card that is provided
39 to a student at a public or private college or university and is
40 provided to that student solely based on his or her enrollment in a

1 public or private university, or is provided to a student who would
2 not otherwise qualify for that credit card on the basis of his or her
3 income. A “student credit card” does not include a credit card
4 issued to a student who has a cocardholder or cosigner who would
5 otherwise qualify for a credit card other than a student credit card.

6 ~~(n)~~

7 (r) “Retail motor fuel dispenser” means a device that dispenses
8 fuel that is used to power internal combustion engines, including
9 motor vehicle engines, that processes the sale of fuel through a
10 remote electronic payment system, and that is in a location where
11 an employee or other agent of the seller is not present.

12 ~~(o)~~

13 (s) “Retail motor fuel payment island automated cashier” means
14 a remote electronic payment processing station that processes the
15 retail sale of fuel that is used to power internal combustion engines,
16 including motor vehicle engines, that is in a location where an
17 employee or other agent of the seller is not present, and that is
18 located in close proximity to a retail motor fuel dispenser.

19 *SEC. 2. Section 1747.08 of the Civil Code is amended to read:*

20 1747.08. (a) Except as provided in subdivision (c), no person,
21 firm, partnership, association, or corporation that accepts credit
22 cards *or debit cards* for the transaction of business shall do any of
23 the following:

24 (1) Request, or require as a condition to accepting the credit
25 card *or debit card* as payment in full or in part for goods or
26 services, the cardholder *or debit cardholder* to ~~write~~ *provide* any
27 personal identification information ~~upon the credit card transaction~~
28 ~~form or otherwise~~.

29 (2) Request, or require as a condition to accepting the credit
30 card *or debit card* as payment in full or in part for goods or
31 services, the cardholder *or debit cardholder* to provide personal
32 identification information, which the person, firm, partnership,
33 association, or corporation accepting the credit card ~~writes~~ *or debit*
34 *card collects*, causes to be ~~written~~ *collected*, or otherwise records
35 upon the credit card *or debit card* transaction ~~form~~ *template* or
36 otherwise.

37 (3) Utilize, in any credit card *or debit card* transaction, a credit
38 card ~~form~~ *or debit card template* which contains ~~preprinted~~ spaces
39 specifically designated for filling in any personal identification
40 information of the cardholder *or debit cardholder*.

1 (b) For purposes of this section “personal identification
2 information,” means information concerning the cardholder *or*
3 *debit cardholder*, other than information set forth on the credit
4 card *or debit card*, and including, but not limited to, the
5 cardholder’s *or debit cardholder’s* address and telephone number.

6 (c) Subdivision (a) does not apply in the following instances:

7 (1) If the credit card *or debit card* is being used as a deposit to
8 secure payment in the event of default, loss, damage, or other
9 similar occurrence.

10 (2) Cash advance transactions.

11 (3) If any of the following applies:

12 (A) The person, firm, partnership, association, or corporation
13 accepting the credit card *or debit card* is contractually obligated
14 to provide personal identification information in order to complete
15 the credit card *or debit card* transaction.

16 (B) The person, firm, partnership, association, or corporation
17 accepting the credit card in a sales transaction at a retail motor fuel
18 dispenser or retail motor fuel payment island automated cashier
19 uses the ~~Zip~~ ZIP Code information solely for prevention of fraud,
20 theft, or identity theft.

21 (C) The person, firm, partnership, association, or corporation
22 accepting the credit card *or debit card* is obligated to collect and
23 record the personal identification information by federal or state
24 law or regulation.

25 (4) If personal identification information is required for a special
26 purpose incidental but related to the individual credit card *or debit*
27 *card* transaction, including, but not limited to, information relating
28 to shipping, delivery, servicing, or installation of the purchased
29 merchandise, or for special orders.

30 (d) This section does not prohibit any person, firm, partnership,
31 association, or corporation from requiring the cardholder *or debit*
32 *cardholder*, as a condition to accepting the credit card *or debit*
33 *card* as payment in full or in part for goods or services, to provide
34 reasonable forms of positive identification, which may include a
35 driver’s license or a California state identification card, or where
36 one of these is not available, another form of photo identification,
37 provided that none of the information contained thereon is ~~written~~
38 *collected* or recorded on the credit card *or debit card* transaction
39 ~~form~~ *template* or otherwise. If the cardholder *or debit cardholder*
40 pays for the transaction with a credit card *or debit card* number

1 and does not make the credit card *or debit card* available upon
2 request to verify the number, the cardholder's *or debit cardholder's*
3 driver's license number or identification card number may be
4 recorded on the credit card transaction ~~form~~ or otherwise.

5 (e) Any person who violates this section shall be subject to a
6 civil penalty not to exceed two hundred fifty dollars (\$250) for the
7 first violation and one thousand dollars (\$1,000) for each
8 subsequent violation, to be assessed and collected in a civil action
9 brought by the person paying with a credit card *or debit card*, by
10 the Attorney General, or by the district attorney or city attorney
11 of the county or city in which the violation occurred. However,
12 no civil penalty shall be assessed for a violation of this section if
13 the defendant shows by a preponderance of the evidence that the
14 violation was not intentional and resulted from a bona fide error
15 made notwithstanding the defendant's maintenance of procedures
16 reasonably adopted to avoid that error. When collected, the civil
17 penalty shall be payable, as appropriate, to the person paying with
18 a credit card *or debit card* who brought the action, or to the general
19 fund of whichever governmental entity brought the action to assess
20 the civil penalty.

21 (f) The Attorney General, or any district attorney or city attorney
22 within his or her respective jurisdiction, may bring an action in
23 the superior court in the name of the people of the State of
24 California to enjoin violation of subdivision (a) and, upon notice
25 to the defendant of not less than five days, to temporarily restrain
26 and enjoin the violation. If it appears to the satisfaction of the court
27 that the defendant has, in fact, violated subdivision (a), the court
28 may issue an injunction restraining further violations, without
29 requiring proof that any person has been damaged by the violation.
30 In these proceedings, if the court finds that the defendant has
31 violated subdivision (a), the court may direct the defendant to pay
32 any or all costs incurred by the Attorney General, district attorney,
33 or city attorney in seeking or obtaining injunctive relief pursuant
34 to this subdivision.

35 (g) Actions for collection of civil penalties under subdivision
36 (e) and for injunctive relief under subdivision (f) may be
37 consolidated.

38 (h) The changes made to this section by Chapter 458 of the
39 Statutes of 1995 apply only to credit card transactions entered into
40 on and after January 1, 1996. Nothing in those changes shall be

1 construed to affect any civil action which was filed before January
2 1, 1996.

3 *SEC. 3. Section 1747.08.1 is added to the Civil Code, to read:*

4 *1747.08.1. (a) An operator of a commercial Internet Web site*
5 *or online service that collects personal identifiable information*
6 *for a credit card or debit card transaction shall not require a*
7 *cardholder or a debit cardholder to provide any information other*
8 *than their ZIP Code to complete the credit card or debit card*
9 *transaction through the Internet.*

10 *(b) Subdivision (a) does not apply to any of the following:*

11 *(1) Instances in which the credit card is being used as a deposit*
12 *to secure payment in the event of default, loss, damage, or other*
13 *similar occurrence.*

14 *(2) Cash advance transactions.*

15 *(3) Instances in which either of the following applies:*

16 *(A) An operator of a commercial Internet Web site or online*
17 *service is contractually obligated to provide personal identifiable*
18 *information in order to complete the credit card or debit card*
19 *transaction.*

20 *(B) An operator of a commercial Internet Web site or online*
21 *service is obligated to collect and record the personal identifiable*
22 *information by federal or state law or regulation.*

23 *(4) Instances in which personal identifiable information is*
24 *required for a special purpose incidental but related to the*
25 *individual credit card or debit card transaction, including, but not*
26 *limited to, information relating to shipping, delivery, servicing,*
27 *or installation of the purchased merchandise, or for special orders.*

28 *(c) For purposes of this section, the following definitions apply:*

29 *(1) "Personal identifiable information" means individually*
30 *identifiable information about an individual consumer, collected*
31 *online by the operator from that individual, and maintained by the*
32 *operator in an accessible form, and includes any of the following:*

33 *(A) First and last name.*

34 *(B) Home or other physical address, including street name and*
35 *name of a city or town.*

36 *(C) E-mail address.*

37 *(D) Telephone number.*

38 *(2) "Operator" means a person or entity that owns an Internet*
39 *Web site or an online service that collects and maintains personal*
40 *identifiable information from a consumer residing in California*

1 *who uses or visits the Internet Web site or online service if the*
2 *Internet Web site or online service is operated for commercial*
3 *purposes.*

4 (3) “Consumer” means an individual who seeks or acquires,
5 by purchase or lease, any goods, services, money, or credit for
6 personal, family, or household purposes.

7 (d) (1) A person who violates this section shall be subject to a
8 civil penalty not to exceed two hundred fifty dollars (\$250) for the
9 first violation and one thousand dollars (\$1,000) for each
10 subsequent violation, to be assessed and collected in a civil action
11 brought by the person paying with a credit card or debit card, by
12 the Attorney General, or by the district attorney or city attorney
13 of the county or city in which the violation occurred.

14 (2) Notwithstanding paragraph (1), a civil penalty shall not be
15 assessed for a violation of this section if the defendant shows, by
16 a preponderance of the evidence, that the violation was not
17 intentional and resulted from a bona fide error made
18 notwithstanding the defendant’s maintenance of procedures
19 reasonably adopted to avoid that error.

20 (3) When collected, the civil penalty shall be payable, as
21 appropriate, to the person paying with a credit card or debit card
22 who brought the action, or to the general fund of the governmental
23 entity that brought the action to assess the civil penalty.

24 (e) The Attorney General, or any district attorney or city
25 attorney within his or her respective jurisdiction, may bring an
26 action in the superior court in the name of the people of the State
27 of California to enjoin violation of subdivision (a) and, upon notice
28 to the defendant of not less than five days, to temporarily restrain
29 and enjoin the violation. If it appears to the satisfaction of the
30 court that the defendant has, in fact, violated subdivision (a), the
31 court may issue an injunction restraining further violations, without
32 requiring proof that any person has been damaged by the violation.
33 In these proceedings, if the court finds that the defendant has
34 violated subdivision (a), the court may direct the defendant to pay
35 any or all costs incurred by the Attorney General, district attorney,
36 or city attorney in seeking or obtaining injunctive relief pursuant
37 to this subdivision.

38 (f) Actions for collection of civil penalties under subdivision (d)
39 and for injunctive relief under subdivision (e) may be consolidated.

1 (g) *This section shall apply only to credit card and debit card*
2 *transactions entered into on and after January 1, 2014. This section*
3 *shall not be construed to affect any civil action that was filed before*
4 *January 1, 2014.*

5 *SEC. 4. Section 1747.09 of the Civil Code is amended to read:*

6 1747.09. (a) Except as provided in this section, no person,
7 firm, partnership, association, corporation, or limited liability
8 company that accepts credit or debit cards for the transaction of
9 business shall ~~print~~ *display* more than the last five digits of the
10 credit or debit card account number or the expiration date upon
11 any of the following:

12 (1) Any receipt provided to the cardholder.

13 (2) Any receipt retained by the person, firm, partnership,
14 association, corporation, or limited liability company, ~~which is~~
15 ~~printed at the time of the purchase, exchange, refund, or return,~~
16 ~~and is signed by the cardholder.~~

17 (3) Any receipt retained by the person, firm, partnership,
18 association, corporation, or limited liability company, ~~which is~~
19 ~~printed~~ *that* at the time of the purchase, exchange, refund, or return,
20 ~~but~~ is not signed by the cardholder, because the cardholder *or debit*
21 *cardholder* used a personal identification number to complete the
22 transaction.

23 (b) This section shall apply only to receipts that include a credit
24 or debit card account number that are electronically printed and
25 shall not apply to transactions in which the sole means of recording
26 the person's credit or debit card account number is by handwriting
27 or by an imprint or copy of the credit or debit card.

28 (c) This section shall not apply to documents, other than the
29 receipts described in paragraphs (1) to (3), inclusive, of subdivision
30 (a), used for internal administrative purposes.

31 (d) Paragraphs (2) and (3) of subdivision (a) shall become
32 operative on January 1, 2009.

33 *SEC. 5. Section 1748.30 of the Civil Code is amended to read:*

34 1748.30. For purposes of this title, the following definitions
35 shall apply:

36 (a) "Accepted debit card" means any debit card which the debit
37 cardholder has requested and received or has signed, or has used,
38 or has authorized another person to use, for the purpose of
39 obtaining money, property, labor, or services. Any debit card issued
40 in renewal of, or in substitution for, an accepted debit card becomes

1 an accepted debit card when received by the debit cardholder,
2 whether the debit card is issued by the same or by a successor card
3 issuer.

4 (b) “Account” means a demand deposit (checking), savings, or
5 other consumer asset account, other than an occasional or incidental
6 credit balance in a credit plan, established primarily for personal,
7 family, or household purposes.

8 (c) “Adequate notice” has the same meaning as found in
9 subdivision ~~(k)~~ (o) of Section 1747.02.

10 (d) “Debit card” means an accepted debit card or other means
11 of access to a debit cardholder’s account that may be used to initiate
12 electronic funds transfers and may be used without unique
13 identifying information such as a personal identification number
14 to initiate access to the debit cardholder’s account.

15 (e) “Debit card issuer” means any person who issues a debit
16 card or the agent of that person for that purpose.

17 (f) “Debit cardholder” means a natural person to whom a debit
18 card is issued.

19 (g) “Unauthorized use” means the use of a debit card by a
20 person, other than the debit cardholder, to initiate an electronic
21 fund transfer from the debit cardholder’s account without actual
22 authority to initiate the transfer and from which the debit cardholder
23 receives no benefit. The term does not include an electronic fund
24 transfer initiated in any of the following manners:

25 (1) By a person who was furnished the debit card to the debit
26 cardholder’s account by the debit cardholder, unless the debit
27 cardholder has notified the debit card issuer that transfers by that
28 person are no longer authorized.

29 (2) With fraudulent intent by the debit cardholder or any person
30 acting in concert with the debit cardholder.

31 (3) By the debit card issuer or its employee.

32 *SEC. 6. Section 99030 of the Education Code is amended to*
33 *read:*

34 99030. The Regents of the University of California and the
35 governing body of each accredited private or independent college
36 or university in the state are requested to, and the Trustees of the
37 California State University and the Board of Governors of the
38 California Community Colleges shall, adopt policies to regulate
39 the marketing practices used on campuses by credit card
40 companies. In adopting the policies, it is the intent of the

Legislature that those entities consider including all of the following requirements:

(a) That sites at which student credit cards are marketed be registered with the campus administration and that consideration be given to limiting the number of sites allowed on a campus.

(b) That marketers of student credit cards be prohibited from offering gifts to students for filling out credit card applications.

(c) That credit card and debt education and counseling sessions become a regular part of campus orientation of new students. For purposes of this section, colleges and universities shall utilize existing debt education materials prepared by nonprofit entities and thus not incur the expense of preparing new materials.

(d) For the purposes of this chapter, “student credit card” has the meaning set forth in subdivision (m) (q) of Section 1747.02 of the Civil Code.

~~SECTION 1. Section 2944.7 of the Civil Code is amended to read:~~

~~2944.7. (a) Notwithstanding any other law, it shall be unlawful for a person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower to do any of the following:~~

~~(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.~~

~~(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.~~

~~(3) Take any power of attorney from the borrower for any purpose.~~

~~(b) A violation of this section by a natural person is a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.~~

1 ~~(e) Nothing in this section precludes a person, or an agent acting~~
2 ~~on that person's behalf, who offers loan modification or other loan~~
3 ~~forbearance services for a loan owned or serviced by that person,~~
4 ~~from doing any of the following:~~

5 ~~(1) Collecting principal, interest, or other charges under the~~
6 ~~terms of a loan, before the loan is modified, including charges to~~
7 ~~establish a new payment schedule for a nondelinquent loan, after~~
8 ~~the borrower reduces the unpaid principal balance of that loan for~~
9 ~~the express purpose of lowering the monthly payment due under~~
10 ~~the terms of the loan.~~

11 ~~(2) Collecting principal, interest, or other charges under the~~
12 ~~terms of a loan, after the loan is modified.~~

13 ~~(3) Accepting payment from a federal agency in connection~~
14 ~~with the federal Making Home Affordable Plan or other federal~~
15 ~~plan intended to help borrowers refinance or modify their loans~~
16 ~~or otherwise avoid foreclosures.~~

17 ~~(d) This section shall apply only to mortgages and deeds of trust~~
18 ~~secured by residential real property containing four or fewer~~
19 ~~dwelling units.~~